

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

MARK LEE REYNOLDS, )  
 )  
 Petitioner, )  
 v. ) Civil Action  
 ) No. 05-3271-CV-S-RED-H  
UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

**REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner has filed a petition for a writ of habeas corpus, in which he attempts to challenge his commitment as a civil detainee pursuant to 18 U.S.C. §4246. He asserts that there was no basis for his finding of incompetence in the Eastern District of California, and that his court-appointed counsel committed legal malpractice. A show cause order entered in this case and a response has been filed.

A review of the files and records in this case establish that the petitioner was lawfully committed under the provisions of 18 U.S.C. §4246 on February 7, 2005 in the case of *United States v. Mark L. Reynolds*, Case No. 04-3244-CV-S-RED. The final order in that case has been appealed and is now pending in the Court of Appeals for the Eighth Circuit, Case No. 05-1837.

The petition in this case, to the extent it challenges his commitment, raises issues which are presently being litigated. To the extent the petitioner challenges the findings in the Eastern District of California or the competence of his counsel in that jurisdiction, those matters are not properly before the court in this district. It is therefore

RECOMMENDED that the petitioner be denied leave to proceed in forma pauperis; and  
it is further

RECOMMENDED that the petition filed herein be dismissed without prejudice.<sup>1</sup>

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/s/ James C. England

JAMES C. ENGLAND  
United States Magistrate Judge

Date: August 11, 2005

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<sup>1</sup> Counsel for petitioner has filed a Motion to Withdraw, citing a conflict of interest, and petitioner has filed a Motion to Dismiss Counsel. After advising petitioner of his right to file exceptions to this Report and Recommendation, the motion will be granted, and the office of the federal public defender is relieved from further representation in this matter.